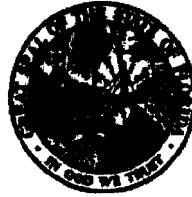


State of Florida

EX PARTE OR LATE FILED

Commissioners:  
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**Public Service Commission**

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September 4, 1996

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**BY FEDERAL EXPRESS**

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

Re: CC Docket No. 96-149 - Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended; and Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area. (Ex Parte Filing)

Dear Mr. Caton:

Enclosed are the original and twelve copies of the Florida Public Service Commission's comments in the above docket. Please date-stamp one copy and return it in the enclosed self-addressed stamped envelope. We are also forwarding a hard copy, plus diskette, of our comments to Janice Myles of the Common Carrier Bureau.

Sincerely,

A handwritten signature in cursive script, reading "Cynthia B. Miller".

Cynthia B. Miller  
Associate General Counsel

CBM/jb  
Enclosure

cc: International Transcription Service  
2100 M Street, NW  
Suite 140  
Washington, D.C. 20037

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**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

In the Matter of: )

Implementation of the Non-Accounting )  
Safeguards of Sections 271 and 272 of )  
the Communications Act of 1934, as )  
amended; )

and )

Regulatory Treatment of LEC Provision )  
of Interexchange Services Originating )  
in the LEC's Local Exchange Area )

**RECEIVED**  
**SEP 5 1996**  
**FCC MAIL ROOM**

CC Docket No. 96-149  
(Ex Parte Filing)

**SUMMARY OF REPLY COMMENTS OF  
THE FLORIDA PUBLIC SERVICE COMMISSION**

On August 14, 1996, the FPSC filed its comments with the FCC regarding the NPRM on Non-Accounting Safeguards. In the comments we stated that we believe the enforcement of sections 271 and 272 are the joint responsibility of the FCC and the State commissions, and that States should be allowed to establish non-accounting and accounting safeguards beyond those established by the FCC. In addition, we expressed our support for the NARUC Resolution, adopted on July 25, 1996, which proposes certain guidelines regarding the joint federal/state audit required by section 272 and also outlines the role NARUC believes the State commissions and the FCC should have in the audit process.

These are the FPSC's reply comments to the same NPRM. In summary, we believe that the requirements for provision of in-region interLATA service under section 271 are important measures to meet before a BOC can be authorized to provide such services.

If the BOCs meet the requirements and competition truly exists, less reliance may be placed upon regulatory enforcement efforts.

Finally, the BOC affiliates must be separate in all operation, administration, and facility respects in order to help ensure against anti-competitive behavior and cross-subsidization between local exchange and manufacturing or other services. They should be prohibited from sharing accounting, auditing, legal, personnel recruitment and management, finance, tax, insurance, pension, research and development, marketing, and customer service activities. Further, it is the opinion of the FPSC that a holding company may only perform these types of services on a consolidated, limited basis, and should be subject to review and approval by federal and state commissions.

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

In the Matter of: )

Implementation of the Non-Accounting )  
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CC Docket No. 96-149  
(Ex Parte Filing)

**REPLY COMMENTS OF THE FLORIDA PUBLIC SERVICE COMMISSION**

**Introduction**

On July 18, 1996, the Federal Communications Commission (FCC) issued a Notice of Proposed Rulemaking (NPRM) regarding Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended; and Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area, Docket No. 96-149. On August 14, 1996, the Florida Public Service Commission (FPSC) filed comments with the FCC in response to that NPRM. These are the FPSC's reply comments in that Docket.

In the FPSC comments, we stated that we believe the enforcement of sections 271 and 272 are the joint responsibility of the FCC and the State commissions, and that States should be allowed to establish non-accounting and accounting safeguards beyond those established by the FCC. In addition, we expressed our support for the NARUC Resolution, adopted on July 25, 1996, which

REPLY COMMENTS OF THE FLORIDA PUBLIC SERVICE COMMISSION  
CC DOCKET NO. 96-149

proposes certain guidelines regarding the joint federal/state audit required by section 272 and also outlines the role NARUC believes the State commissions and the FCC should have in the audit process.

Among the comments issued by other parties in response to this NPRM, there were two major topics of discussion which we believe are important. First was the theme of what types of safeguards are necessary for enforcement of sections 271 and 272. Second was the subject of what does "separate" mean in the context of separate affiliate. What types of activities or facilities can the Bell Operating Companies (BOC) and their affiliates share? The following are our views on these issues.

**Necessary Safeguards**

The types and number of safeguards necessary for enforcement of sections 271 and 272 are principal concerns of many commenting parties and the FCC. The FPSC agrees with the Sprint Corporation that "it is the administration of the Section 271(d)(3) entry test which is of primary importance. The Commission's regulatory enforcement efforts which come afterward -- while very important-- are secondary."<sup>1</sup> If each BOC meets the terms and conditions set out in that section, there will need to be less reliance on regulatory enforcement efforts once the companies are authorized to

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<sup>1</sup>Sprint Corporation Comments-CC Docket No. 96-149, August 15, 1996, page 4.

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offer service. However, we also believe it is necessary to have adequate safeguards in place in order to detect any cross-subsidizations or violations of the provisions of the sections. The FPSC believes that adequate separate affiliates standards and the performance of biennial joint federal/state audits will help protect against cross-subsidization between local exchange and manufacturing or other services.

**Separate Affiliates and Shared Services**

There seems to be little agreement as to what constitutes a separate affiliate as required by section 272. The United States Telephone Association believes that "Congress intended the separate affiliate requirement of Section 272 to be more of an accounting separate affiliate, rather than a separate facilities affiliate."<sup>2</sup> However, the FPSC believes that in order for the separate affiliate requirement to be adequate to guard against and to help detect any cross-subsidizations, the BOC and the affiliates must be truly separate entities in both accounting and facilities respects. As stated in section 272, the BOC and the affiliate should have separate officers, directors, and employees, maintain separate books, records and accounts. Further, if the entities are truly separate, it would necessarily mean that the affiliate "may not

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<sup>2</sup>Comments of the United States Telephone Association, CC Docket No. 96-149, August 15, 1996, Executive Summary, page ii.

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obtain credit under any arrangement that would permit a creditor, upon default, to have recourse to the assets"<sup>3</sup> of the BOC. We believe, as Time Warner states in its comments, that "section 272's prohibition on common employees precludes the sharing of any 'in-house' administrative services."<sup>4</sup> In addition to accounting, auditing, legal services, personnel recruitment and management, finance, tax, insurance, and pension services, the prohibition should include sharing of operating, installation and maintenance personnel, and research and development activities.

Still other commenting parties spent a lot of time addressing the potential negative effects of allowing shared marketing services. The FPSC believes that if marketing services were shared or provided by one or the other affiliate, anti-competitive behavior could potentially occur through the promotion of the BOC and affiliate services jointly. We believe the shared marketing prohibition should also include billing inserts. If either the BOC's or the affiliate's services were promoted through bill inserts in the other's monthly billings, there would be the same threat of anti-competitive behavior as with joint marketing. Therefore, two safeguards are necessary. First, if marketing is to

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<sup>3</sup>§272(b)(4)

<sup>4</sup>Comments of Time Warner Cable-CC Docket No. 96-149, August 15, 1996, page 19.

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be provided for both types of services by any one entity it should be performed by an independent third party. Second, if affiliate bill inserts are to be allowed, unaffiliated third parties should also have the opportunity to non-discriminately include their inserts into the monthly bills of the BOC or its affiliate. These two safeguards are necessary to insure that the position of either the BOC or the affiliate is not advanced simply because of the affiliated relationship with the other.

In addition, the FPSC believes that customer service activities should be held to the same standards as marketing services. The same types of abuse of the affiliate relationship could occur with this type of service. Therefore, as with shared marketing, there could be the potential for unfair promotion of the other affiliate's services. The BOC and its affiliate should not be able to discriminately promote each others services. As with billing inserts, if either affiliate promotes the other's services, they should be required to non-discriminately apprise the same customers of any alternative or competitors' services.

Several commenting parties also believe that many of the administrative services should not be shared. However, there is less consensus on whether a holding company can perform the services for both the BOC and its affiliate. It is the FPSC's opinion that each affiliate and BOC should be self-supporting and



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should have their own dedicated staff to perform their own administrative activities. The holding company relationship with the BOC and any affiliates should not undermine the intent of the statute to have fully separate affiliates. Administrative and other activities, such as pension, insurance, or shareholder reporting, may only be performed by a holding company on a consolidated, limited basis and should be subject to review and approval by federal and state commissions.


**Summary**

In summary, the FPSC believes that the competitive checklist in section 271 should be the principal article for helping to protect against cross-subsidization between local exchange and interLATA services. If competition truly exists and can be demonstrated through the section 271 approval process, regulators can place less reliance on regulatory enforcement efforts once the companies are authorized to offer service. Finally, the BOCs and their affiliates should be separate in all operation, administration, and facility respects in order to guard against and to help detect any cross-subsidizations. The affiliates should not share employees or facilities because of the potential to abuse or unfairly benefit from the affiliate relationship. The services and activities they should not jointly engage in include, among others, accounting, auditing, legal, personnel recruitment and management,

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finance, tax, insurance, pension, research and development, marketing, and customer service. Further, it is the opinion of the FPSC that a holding company parent may only perform these types of services on a consolidated, limited basis, and should be subject to review and approval by federal and state commissions.

Respectfully submitted,



CYNTHIA B. MILLER  
Senior Attorney

FLORIDA PUBLIC SERVICE COMMISSION  
2540 Shumard Oak Boulevard  
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DATED: September 4, 1996

REPLY COMMENTS OF THE FLORIDA PUBLIC SERVICE COMMISSION  
CC DOCKET NO. 96-149

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

In the Matter of: )

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CC Docket No. 96-149

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing  
Reply Comments of the Florida Public Service Commission has been  
furnished to the parties on the attached list, this 4<sup>th</sup> day of  
September, 1996.

  
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